

STATE OF ILLINOIS



ILLINOIS COMMERCE COMMISSION

March 30, 2000

Illinois Commerce Commission
On Its Own Motion

:
:
: 00-0007

Requirements governing the form and
content of contract summaries for the
neutral fact-finder process for 2000
under Section 16-112(c) of the
Public Utilities Act.

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:
: **SERVED VIA ELECTRONICALLY**
: **AT THE REQUEST OF THE**
: **HEARING EXAMINER**

Dear Sir/Madam:

Attached is a copy of the Hearing Examiner's Proposed Order in the above matter. It is being sent to you pursuant to Section 200.820 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.820).

Under Section 200.830 of the Rules, exceptions to the Proposed Order and replies thereto may be filed by the parties within the time periods established by the rule or such other times as fixed by the Hearing Examiner. The dates for filing exceptions and replies are fixed at April 6, 2000, and April 13, 2000, respectively.

The parties are reminded that pursuant to 83 Ill. Adm. Code 200.830 (b), substitute language is required to be included with exceptions when exception is taken as to a statement or finding of fact in the proposed order. Briefs on exceptions not including such language shall be stricken.

Sincerely,

A handwritten signature in cursive script that reads "Donna M. Caton".

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HEARING EXAMINER'S PROPOSED ORDER

March 30, 2000

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By the Commission:

I. PROCEDURAL HISTORY

On January 4, 2000, the Illinois Commerce Commission ("Commission") entered an order initiating this proceeding to establish requirements governing the form and content of contract summaries for the 2000 neutral fact-finder ("NFF") process under Section 16-112(c) of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., and to address related issues. Section 16-112 directs the Commission-appointed NFF to ascertain the market value of electric power and energy in the State of Illinois based upon a review of the aforementioned contract summaries submitted by electric utilities and alternative retail electric suppliers ("ARES").

Pursuant to due notice, this matter came on for hearing before a duly authorized Hearing Examiner of the Commission at its offices in Springfield, Illinois on January 20, January 27, February 18, and March 9, 2000. Petitions to intervene were filed by MidAmerican Energy Company, Peoples Energy Services Corporation ("PE Services"), Enron Energy Services, Inc., Commonwealth Edison Company ("ComEd"), Blackhawk Energy Services, L.L.C., Illinois Power Company ("IP"), NewEnergy Midwest, L.L.C. ("NewEnergy"), Central Illinois Public Service Company d/b/a AmerenCIPS and Union Electric Company d/b/a AmerenUE (collectively "Ameren"), Central Illinois Light Company, Illinois Industrial Energy Consumers ("IIEC"), Mt. Carmel Public Utility Company, Nicor Energy, LLC ("Nicor"), Edgar Electric Co-operative Association d/b/a EnerStar Power Corporation, Interstate Power Company, South Beloit Water, Gas and Electric Company, and Alliant Energy Resources. All of the petitions to intervene were granted. In addition, the City of Chicago entered an appearance. Commission Staff ("Staff") participated as well.

Many of the parties participated in workshops on January 27 and February 8, 2000 in hopes of resolving issues and arriving at a stipulation. Those discussion,

however, were not completely successful. At the March 9 hearing, testimony was presented by Robert Bishop and Bruce Larson on behalf of Staff, David Geraghty, Michael Feerick, and Paul Crumrine on behalf of ComEd, David Hastings on behalf of IP, Wade Miller and Richard Voytas on behalf of Ameren, Koby Bailey on behalf of Nicor, Phillip O'Connor on behalf of NewEnergy, and Robert Stephens on behalf of IIEC. At the end of the March 9 hearing the record was marked "Heard and Taken." Staff, ComEd, IP, Ameren, PE Services, Nicor, NewEnergy, and IIEC each submitted an Initial Brief and Reply Brief.

II. BACKGROUND

Under Section 16-112(c) and (d), the NFF is to calculate separate market values for summer and non-summer on-peak and off-peak periods for individual utilities or a single set of values to be used by all utilities in Illinois. The market value determined by the NFF may only be used to calculate the transition charges and the price for power purchase options provided pursuant to Section 16-110(b) and (c). As indicated above, Section 16-112(c) governs the contract summaries to be submitted to the NFF to be used to determine the market value. Section 16-112(c) reads in full as:

- (c) On or before June 1, 1998, on or before April 1, 1999, and on or before each June 1 from 2000 until 2007, or until discontinued in accordance with subsection (m) of this Section, each electric utility and each alternative retail electric supplier shall submit to the neutral fact-finder a summary of (A) all contracts entered into after June 1, 1997 that are for the sale of electric power and energy from a generating facility or facilities located in this State or located in a contiguous State and owned by an electric utility as part of its interconnected operating system and delivery during one or more of the 5 years succeeding the date of submission, and (B) all contracts entered into after June 1, 1997 for purchase and delivery of electric power and energy in or into this State during one or more of the 5 years succeeding the date of submission; provided, however, that such contracts shall not include (i) contracts between the electric utility and an affiliate; (ii) sales, purchases, or deliveries made under rates and tariffs filed with the Commission, except for tariffs filed pursuant to subsection (d) of Section 16-110 and except for special or negotiated rate contracts between an electric utility and a retail customer to the extent that such contracts are for the provision of electric power and energy after the date that the customer becomes eligible for delivery services; and (iii) extensions or amendments to full requirements wholesale contracts existing as of the effective date of this amendatory Act of 1997, provided that such contracts, extensions, or amendments are cost of service regulated by the Federal Energy Regulatory Commission. The summaries shall, at a minimum, identify the date of the contract; the year in which the electric power or energy is to be sold or delivered; the point of delivery; defining characteristics such as the nature of the power transaction (for example, reserve responsibility (firm, non-firm)), length of contract and temporal differences (for example, season, on-peak or off-peak); and the applicable prices stated at the

point at which the electric power and energy leaves the electric utility's or alternative retail electric supplier's transmission system, as the case may be, in the case of contracts described in item (A) and at the point at which the electric power and energy enters the electric utility's transmission system in the case of contracts in item (B), provided, that the applicable price shall be stated at the point at which the electric power and energy enters the electric utility's transmission system in the case of electric power and energy generated for delivery within the electric utility's service area. In reporting to the neutral fact-finder the price of power and energy sold under bundled service contracts, electric utilities and alternative retail electric suppliers shall deduct from the contract price the charges for delivery services, including transition charges, applicable to delivery services customers in a utility's service area, and charges for services, if any, other than the provision of power and energy or delivery services. The Commission may adopt orders setting forth requirements governing the form and content of such summaries.

220ILCS5/16-112(c).

Of those parties that submitted testimony and/or briefs, all agree that the NFF process is problematic; but the parties also, for the most part, recognize that the Act impedes the Commission's ability to resolve many of those problems. Most, if not all, parties agree that NFF's market value determinations in the 1999 NFF Report missed the mark. Many relate that the NFF's on-peak summer values seemed too low while his off-peak non-summer values seemed too high. Specific recommendations made by each party to ensure that the NFF's market value more accurately reflects the "true" market value will be discussed below in the context of Staffs proposed instructions for completing the contract summary form and worksheets. Staffs proposed instructions have been attached as Schedule B to ICC Staff Ex. 1. The contract summary form and confidentiality procedures for handling contract summaries proposed by Staff are attached as Schedules A and C to the same exhibit.

No party objected to the contents of Schedules A and C and the Commission knows of no reason why the contract summary form and confidentiality procedures proposed by Staff should be modified. Accordingly, the Commission finds that the contract summary form as depicted in Schedule A and confidentiality procedures as depicted in Schedule C should be adopted for the 2000 NFF process. The contract summary is attached to this Order as Appendix A. Areas of contention concerning Staffs proposed instructions and will be discussed below in the order they arise in the proposed instructions. Those issues that do not relate to a 'specific section of the proposed instructions will be addressed in Section IV of the Order.

III. **CONTESTED ISSUES REGARDING THE PROPOSED INSTRUCTIONS FOR COMPLETING THE CONTRACT SUMMARY FORM AND WORKSHEETS**

A. **Providing Additional Information**

The first issue arises in the context of Section B. 2. (d) of the proposed instructions, but also affects Sections C. 15. B., C. 17., and G. (e), (g), and (n). These sections concern the provisioning of additional information to the NFF to assist him in making an accurate market value determination. Whether these sections should be revised so as to cast a wider net and expand the information that should be reported was initially raised by **NewEnergy** witness Dr. O'Connor. He is concerned that the NFF's market value determinations will again fall short of reality because the NFF will not have the benefit of particular circumstances and/or facts that went into the development of a contract price. For example, Dr. O'Connor finds it doubtful that any of the contracts that will be reported to the NFF will be limited solely to calendar year 2001, the year for which the 2000 NFF will be determining market values. Instead, he believes that it is likely that retail electric suppliers ("RES") have designed multiple year contracts that will produce higher profits in the years outside of 2001. The result, according to Dr. O'Connor, is that the profits that RESs realize on their contracts outside of the calendar year 2001 will subsidize the rate that is charged during 2001. To remedy this situation, he maintains that the Commission should require reporting entities to provide the NFF with information on anticipated profits over the life of the contract in narrative form. Additionally, Dr. O'Connor argues that summaries prepared by reporting entities should provide explanations of features or items that might assist the NFF in having a better appreciation of some of the nuances of the contracts. Dr. O'Connor recommends the following underlined revisions to the proposed instructions:

B. 2. (d)

Finally, responding entities are encouraged to provide any additional information that contributes to the NFF's ability to more fully understand the terms of the contract and may assist the NFF in adequately interpreting the contract in order to make required determinations with greater detail, precision and differentiation.

C. 15. B.

If the wholesale contract is for the buy-back of electric power or energy from a generating facility (or facilities) sold by the purchaser, place a check in the appropriate space provided and also provide on Contract Summary Form Page 5/Excel Worksheet "Add'l Info" a description of the plant/facility sold. The respondent should also provide a detailed explanation as to why or why not, in its opinion, the price for electric power or energy stated in the wholesale contract reflects a true market value.

c. 17.

Bundled Service – Indicate in the space provided whether or not the reported contract provides for bundled service(s). If yes, also provide on Contract Summary Form Page 5/Excel Worksheet “Add’l Info”, a detailed description of those services and the methodology employed to unbundle the reported data (with sample calculations). Also indicate whether the contract reflects any consideration other than electricity and the price paid for electricity. The respondent should provide a detailed explanation as to why or why not, in its opinion, the unbundled price of electric power reported on its submitted Contract Summary Form is reflective of a retail market value.

G.

Provide additional information, as appropriate and required, on the following items:

* * *

(e) Description of facilities sold and reasons why or why not the buy-back price is reflective of a true market value. (C15)

* * *

(g) Description of Bundled Services and price unbundling methodology and reasons why or why not prices stated are reflective of a retail market value. (C17)

* * *

(n) Any other information that contributes to the NFF’s ability to more fully understand the terms of the contract and may assist the NFF in adequately interpreting the contract in order to make required determinations with greater detail, precision and differentiation. (B2(d))

PE Services supports **NewEnergy’s** suggested revisions and argues that the NFF process will be better served and the resulting market value more accurate if the NFF considers all available information. Section 16-112 of the Act, according to PE Services, neither prohibits entities from reporting subjective data nor prohibits the NFF from considering subjective data. Because the NFF has great latitude in weighing the significance of any reported data, PE Services maintains that subjective data certainly could only help the process. As such, PE Services recommends that the Commission allow reporting entities to provide the NFF all information the reporting entity reasonably believes would be helpful to the process. PE Services also notes that Staff is willing to acquiesce to **NewEnergy’s** arguments on this issue.

ComEd witness Crumrine opposes **NewEnergy’s** suggested revisions on the grounds that they will introduce unnecessary speculation and subjectivity into the process. With regard to Dr. O’Connor’s assertion that profits may be allocated differently over multiple year contracts, Mr. Crumrine disagrees that prices paid for 2001 may not be “real” prices, even though they were bargains struck between two willing

contract participants. Mr. Crumrine further asserts that Dr. O'Connor's claim that prices in such contracts are not indicative of the "real" price contradicts Dr. O'Connor's argument that the "retail" market is well defined. In Mr. Crumrine's opinion, the NFF process should not be utilized to reward or insulate certain players in the market from their own business decisions. The most appropriate price to consider, according to ComEd, is the price that is actually contained in the contract. Mr. Crumrine also notes that NewEnergy's revisions call for the reporting entity's opinion of whether or not "the price for power and energy in a contract reflects a "true market value" or a "retail market value." Mr. Crumrine identifies three reasons why such a revision should be rejected: 1) there is no accepted definition of "true market value" or "retail market value," 2) it would inject an undue amount of subjectivity into the reporting process, and 3) it is unclear how Staff would audit this information.

IP and Ameren also urge the Commission to reject NewEnergy's suggestion that reporting entities be required to explain whether rates charged during the calendar year are understated due to profits received outside of 2001.¹ Ameren witness Miller states that Dr. O'Connor has raised a real and valid concern, but does not think the NFF process will be enhanced by introducing reporting entities' subjective views of what their profits "really" are. Mr. Miller argues that specific profits are not directly relevant to a determination of market value and avers that there is tremendous potential for manipulation of results since parties will have incentives to report opinions of market prices that favor the NFF result that they wish to see.

IIEC finds the introduction of such information subjective as well. In particular, IIEC argues that it is not appropriate for the NFF to be exposed to only one party's view of a bilateral contract. Allowing one party to the contract to provide the NFF with its "personal" view of the contract, the prices in the contract, the market in which the contract was entered, or the current market, without giving the other party the opportunity to present its views is essentially unfair, according to IIEC. IIEC agrees with ComEd and Ameren that only relevant factual information should be provided. On a similar note, IIEC raises in its Initial Brief an objection to the use of the word "consideration" in Section C. 17. of Staffs proposed instructions. IIEC argues that the term "consideration" is unclear, undefined, inconsistent with the Act, and also introduces subjectivity into the process and that, therefore, it too must be eliminated. IIEC suggests modifying the sentence containing "consideration" to read, "Also, identify the other services to be furnished under the contract other than the furnishing of power and energy and delivery service." According to IIEC, introducing subjective opinions into the NFF process calls the legality of the process into question.

In response to NewEnergy's recommendations, Staff witness Bishop testifies that he is neither for nor against the revisions, but adds that if the Commission chooses

¹IP adds in its Initial Brief, however, that it agrees that reporting entities should be allowed to provide relevant, explanatory information to the NFF. In addition, IP states that it supports the revisions contained in Schedule D to ICC Staff Ex. 3.0.

to include such language in the instructions, he recommends using slightly different language contained in Schedule D attached to ICC Staff Ex. 3.0. As to IIEC's proposed modification of C. 17., Staff stands by its proposed instructions. Staff maintains that it is endeavoring to require the submission of as much objective information to the NFF as is possible, consistent with the requirements of Section 16-112(c). Staffs understanding is that because of the enactment of Article XVI of the Act, retail customers may enter into a number of types of contracts with RESs—both electric utilities (operating either within or outside their “service areas,” as that term is defined in Section 16-102), and ARES. Staff acknowledges that Section 16-112(c), in requiring the unbundling of bundled contracts, expressly mentions only the unbundling of “charges for services, if any, other than the provision of power and energy or delivery services.” If Staff were certain that “services” were the only additional thing of value that could be provided in a contract for power and energy (other than delivery services), Staff would not necessarily take exception to IIEC's recommended change to Section C.17. On the contrary, however, Staff is unaware of any restriction on the provision (or receipt) by an ARES of goods (e.g., energy conservation measures or electrical equipment) in a contract for power and energy. Similarly, contracts between retail customers and RESs may contain promises which have value, or in-kind payment, or other forms of “consideration,” as that term is used in the law of contracts.

Given the possibility that such items of value will be included in retail electric contracts, Staff does not recommend that the Commission read the explicit term “services” as a limitation on the information which should be provided to the NFF. The more correct reading of the sentence IIEC quotes, according to Staff, is in context with the next sentence of Section 16-112(c), which confers broad authority on the Commission to set forth requirements concerning the form and content of contract summaries. Staff thus stands by its recommended language for Section C.17 with one limited change. If the Commission believes that the term “consideration” is sufficiently vague to inject an unwarranted level of subjectivity into the reporting process, Staff suggests that the relevant sentence be modified to read, “Also indicate whether the contract price reflects any goods, services, promises, or things of value other than electricity and the price paid for electricity.” No other party responded to IIEC's objection to the use of the word “consideration.”

The Commission agrees with those parties who believe that subjective factors may influence a contract price, but finds that it is not appropriate to remedy the situation by introducing such subjective factors into the NFF process. Although the NFF may exercise a certain amount of discretion in his role, allowing reporting entities to submit their opinions and assessments of contracts would not assist the NFF in producing objective market value determinations. As the Ameren and ComEd witnesses observe, such information is vulnerable to manipulation and, due to its nature, it is unclear how Staff would audit such information. The Commission also agrees with IIEC that the parties to a contract may have different opinions on the contract. To allow one party to express its opinions to the NFF and not the other is not appropriate. Accordingly,

NewEnergy's revisions to Sections B. 2. (d), C. 15. B., C. 17., and G. (e), (g), and (n) will not be adopted.

This is not to say, however, that no additional information should be allowed. The term "consideration," to which IIEC objects, could encompass other items or services of value which can impact a contract price. Such information could prove useful to the NFF, but only if it is free from manipulation and may be evaluated objectively. Since the Commission agrees that "consideration" may introduce an element of subjectivity into the NFF process, Section C.17. should be modified; but not so narrowly as IIEC would have to Commission revise the section. Using Staffs proposed revision, the Commission concludes that the last sentence of Section C. 17. of the proposed instructions should read, "Also, indicate whether the contract price reflects any goods, services, or other things of objective value other than electricity and the price paid for electricity." This revision should ensure that the additional information provided is free from the subjective opinions of reporting entities. Not knowing exactly what information reporting entities will consider "objective," however, the Commission must trust in the ability of the NFF to properly evaluate and consider the information that he receives. In no situation, however, should a reporting entity interpret those provisions of the instructions which permit the submission of additional information to the NFF to allow a reporting entity to modify the prices reported to the NFF.

B. Unbundling Transition Charges

One of the most contested issues in this proceeding regards the proper manner in which, to unbundle transition charges from contract prices, as required by the Act. Section D.3. of the proposed instructions states,

As required by Section 16-112(c), reporting entities are to deduct delivery service charges (including transition charges as defined and set forth in applicable tariffs that are in effect at the time the reporting entity's data is submitted), and charges for services, if any, other than the provision of power and energy or delivery services, from bundled service contract prices reported to the NFF.

Although the Commission established transition charges for 2000 in the delivery services tariff cases, the 2000 transition charges are based on the market values calculated by the 1999 NFF. The contracts to be reported to the 2000 NFF, however, are for deliveries of power and energy on or after January 1, 2001. One of the primary purposes of the market values that will be calculated by the 2000 NFF is for use in calculating the transition charges for 2001. The formula for calculating transition charges is set forth in Section 16-102 of the Act. The components of the formula are base revenues, delivery service revenues, market value, and a mitigation factor. Staff witness Bishop testifies that the requirements of Sections 16-112(c) and 16-102 create a circular calculation that can not be solved.

Staff opines that the most reasonable solution to this issue is to use the transition charges that the Commission approved for 2000 and the underlying market value calculated by the 1999 NFF. While there are problems associated with using the 2000 transition charges to unbundle bundled rate contract prices for 2001, Mr. Bishop avers that there is no viable alternative that is less problematic. To accurately calculate the transition charges for 2001, Staff points out that one must first know the market value for 2001. If reporting entities had access to a more accurate, verifiable proxy to be used for the market value variable in the 2001 transition charge equation, Staff states that the 2001 market value would be known and the 2000 NFF process would not be necessary. In the absence of such a proxy, the current tariffed charge, adjusted for changes in the mitigation factor in years after 2001, is most appropriate, according to Staff.

Not all parties agree, however, with Staff's use of the market value calculated by the 1999 NFF to calculate transition charges. As described by Staff, the alternative proposals recommended by **Nicor** witness Bailey and IP witness Hastings, while different, both attempt to effectively eliminate the unbundling of bundled rate contracts as required by Section 16-112(c), and replace it with a market index. Staff recommends that the Commission reject these proposals.

Nicor witness Bailey recommends the use of 1999 day-ahead prices for deliveries into **ComEd's** system as a reasonable proxy for market value when calculating transition charges. He opines that the current transition charge is not reflective of the 2001 transition charge; and that the use of the 2000 transition charge to unbundle bundled prices for 2001 will distort the **NFF's** determination of market value and perpetuate the 2000 market value into 2001. In addition to breaking the circularity problem, Mr. Bailey also asserts that the use of historical day-ahead pricing is an objective measure of market value that may be implemented in calculating transition charges. **Nicor** observes that the Act does not require that the transition charges set forth in utility tariffs be used in unbundling bundled contracts.

IP witness Hastings agrees that **Nicor's** proposal breaks the circularity problem, but observes that no party to the contract agreed to or even contemplated the use of such a valuation. Mr. Hastings also concurs with Mr. Bailey that Staff's instructions for unbundling bundled rate contracts creates an unavoidable bias in the determination of market value for 2001 which perpetuates the 2000 market value. He suggests that the bias and circularity problems could be eliminated if the market value used to calculate transition charges was derived by using the specific market assumptions and the customer's actual usage which was used to negotiate the specific contract. If such specific market assumptions and actual usage data do not exist for particular contracts, Mr. Hastings further states that such bundled contracts should still be reported to the NFF but should be eliminated from consideration by the NFF. Under cross-examination, Mr. Hastings testified that he was unsure how he would unbundle contracts, for reporting purposes as required by the Act, where no market assumptions exist.

Ameren witness Miller testified that Mr. Hastings' proposal would eliminate the circularity problem, but that it substitutes a number that may bear little relation to the market value in the relevant year; also, there is no indication that the buyer agreed to the market assumption used by the seller in the contract negotiation. In support of its position, Ameren states that it is not clear what percentage of the contracts at issue would have "actual market forwards" that were "used" in the negotiation process. Moreover, Ameren points out that it is not clear what "used" means on this context. Ameren also notes that there is no estimated future price for power and energy expressly stated in the contract. Contrary to IP's position, Ameren argues that this does not mean that the parties agreed on an assumed market value that can be calculated. At most, Ameren claims, the parties agreed to an apportionment of risk, whatever the actual market value turns out to be. As for Nicor's proposal, Ameren agrees that use of day-ahead historic data produces a different result, but questions whether it is a more accurate determination of market value going forward. Ameren notes first that Mr. Bailey has not indicated whether the proposed data pool of day-ahead deliveries is robust enough to produce a reliable indicator for the historic period. Ameren adds, that while the data are indeed objective, it is not clear whether it is proper to use that data to set a future market value.

IIEC also opposes IP's proposal, in part because it believes that using market forwards used by one party to negotiate a bilateral contract is inconsistent with Section 16-112(c). Moreover, IIEC witness Stephens states that the market assumption used to negotiate a contract would have no bearing on the actual market value of the freed up capacity and energy in later periods. Nor, argues IIEC, is it appropriate for IP to suggest that the NFF only consider, in his calculation of market value, bundled service contracts in which market assumptions were used by one party in the negotiating process. Furthermore, IIEC maintains that the use of those contracts which Mr. Hastings recommends be ignored does not perpetuate the prior year's NFF market value, unless one makes specific assumptions that the contract price is 0.5 cents per kilowatt hour ("kWh") less than the base rate under which the customer would have otherwise taken service and the base rate (rather than the contract rate) is the proper basis for determining the transition charge to be deducted.

ComEd witness Geraghty testified that the best information available to unbundle bundled rate contracts, is current individual or class transition charge values adjusted each year for the relevant mitigation factor set forth in the law. Mitigation factors are set forth in Section 16-102. The mitigation factor for non-residential retail customers for 2000 is the greater of 0.5 cents per kWh or an amount produced by applying 8% to the applicable base rate. In 2003 the mitigation factor increases to the greater of 0.5 cents per kWh or 10% of the applicable base rate. In 2005 the mitigation factor increases to the greater of 0.6 cents per kWh or 11% of the applicable base rate. The current transition charge is based on the mitigation factor applicable to 2000. Staff agrees that it would be appropriate to adjust the current transition charge by the applicable mitigation factor when unbundling bundled rate contracts for the delivery of power and

energy after December 31, 2002. With regard to Nicor's and IP's proposals, ComEd states that there is no assurance that either of the alternatives proposed would produce a more accurate determination of market value going forward. ComEd reminds the Commission that there would be no way to verify the assumptions used under IP's proposal and, concerning Nicor's proposal, no evidence exists that any party to a contract agreed to the use of day-ahead historic data.

PE Services strongly recommends that either Nicor's or IP's method be used to alleviate the circular calculation and its result of perpetuating the transition charge level. Aside from some general comments about ensuring the accuracy of the market value to be calculated by the 2000 NFF, **NewEnergy** did not specifically address the how transition charges should be unbundled.

In its Initial Brief, **IIEC** proposes an additional modification to Section D.3.—the addition of a new subsection (d). **IIEC** makes this recommendation in conjunction with its support for the revisions to Section D.3.(c) recommended by Staff in Schedule E to ICC Staff Ex. 3.0. Staffs Schedule E concerns revisions regarding the unbundling of delivery service charges. Given the critical nature of the deduction of transition charges from the bundled service contract and given the mandate of the Act, **IIEC** contends that Staffs proposed modifications need further revision and clarification on the unbundling issue.²

Staff urges the Commission to reject **IIEC**'s subsection (d). Staff explains in its Reply Brief that the language suggested by **IIEC** would require an individual transition charge to be calculated for any customer that had a discounted contract (i.e. a contract rate that is less than the tariffed rate) in effect in the year preceding the date the customer becomes eligible for delivery service. Staffs position in this case is that the transition charge in the Commission approved delivery service tariffs, adjusted by the appropriate mitigation factor, is the proper transition charge to be used to unbundle bundled rate contracts. Staff agrees with **IIEC** that to the extent the approved tariffs require an individual transition charge calculation, the **IIEC**'s language is appropriate. However, not every customer with a contract in effect in the year preceding the date the customer became eligible for delivery service is eligible for an individual transition charge calculation under the approved delivery service tariffs, according to Staff. As an example, Staff notes that ComEd and IP's approved delivery service tariffs provide for individual transition charge calculations for customers with maximum peak demand greater than 3 MW and 100 kW respectively. Transition charges for customers with maximum peak demand that is less than those thresholds are calculated on a class basis. Staff states that some ComEd and IP customers that have maximum peak demand less than the respective 3 MW or 100 kW thresholds could have contracts in effect in the year preceding the date the customer is eligible for delivery service. In such cases, Staff maintains that the class transition charge would be used to unbundle those bundled rate contracts.

² **IIEC**'s proposed subsection (d) may be found on page 8 of its Initial Brief.

ComEd also opposes IIEC's proposed subsection (d). ComEd agrees with IIEC that the NFF should take care to ensure that transition charges are properly calculated in the unbundling calculations required by Section 16-112(c), but disagrees with the revision to the instructions proposed by IIEC. The instruction, according to ComEd, would state a general rule relating to when contract rates are to be used in calculating transition charges. ComEd asserts that, on its face, the proposed instruction ignores the actual language of Section 16-102 of the Act, which states that contract rates are to be used only "to the extent applicable." (220 ILCS 5/16-102, subsection (l)(ii) in the definition of "Transition Charges"). ComEd claims that there are many reasons a contract rate might not be applicable and warns the Commission to be cautious about adopting broad interpretations of the law, under the guise of setting instructions for the NFF process, which then could be cited by parties in specific factual disputes not now before the Commission. ComEd avers that this admonition is particularly appropriate when the proposed instruction is offered for the first time in a brief, and other parties were denied the opportunity to present rebuttal testimony on the issue.

The Commission acknowledges that each of the three, methods of unbundling transition charges has shortcomings, but that in light of the arguments on record, the best alternative is to deduct from the contract price the transition charge as defined and set forth in applicable tariffs that are in effect at the time the reporting entity's data is submitted. In addition, the language concerning the mitigation factor on page 3 of Staffs Reply Brief should be added after the first sentence in the first paragraph of Section D.3. of the instructions. Nicor's proposal to use 1999 day-ahead prices must be rejected because, as many parties point out, there is no evidence that any party to a contract agreed, or even contemplated, that such day-ahead prices bear any relationship to the market assumptions they used when negotiating the contract.

IP's proposal is even more problematic. First, although it is unclear whether it would be IP's or the other contracting party's market assumptions that would be used as the market value proxy, IP has not refuted other parties' suggestions that IP intends to use its market assumptions. Why IP's market assumptions should be relied upon rather than the other contracting party's assumptions has not been explained. IP also seems uncertain how its own proposal would be administered when it is faced with unbundling contracts for which no market assumptions exist. The Commission agrees that such contracts must be reported, but does not understand how IP intends to unbundle transition charges when it reports such contracts. For those contracts where market assumptions exist, the Commission agrees with those parties who do not believe such assumptions can be audited.

With regard to IIEC's proposed subsection (d), the Commission does not believe that the language contained therein is consistent with the Commission's earlier conclusions on the unbundling to transition charges.

C. Unbundling Delivery Service Charges

Although related to the unbundling of transition charges, the unbundling of delivery service charges presents different issues. Section D.3.(c) of the proposed instructions addresses unbundling delivery service charges and reads as follows:

- (c) when deducting delivery service charges:
 - (i) if the bundled contract expresses the price of electricity in terms of energy only, but the delivery service charge is calculated on the basis of demand and energy, convert the demand charge in the delivery service tariff to an energy charge by calculating the total demand revenues in each pricing period and dividing by the total peak or off peak kWh of usage, as appropriate, in the pricing period, and subtracting the calculated kWh charge from the bundled contract charge;
 - (ii) if the bundled contract and delivery service charge each have a demand and an energy component, unbundle by deducting each component separately;
 - (iii) if the bundled contract expresses the price of electricity in terms of demand and energy, but the delivery services charge is calculated on the basis of energy only, unbundle by converting the demand component of the bundled charge into an energy charge **as** in (i) above, adding the calculated per kWh demand charge to the per kWh energy charge in the bundled contract and deducting the delivery service charge from the total bundled charge expressed on a per kWh basis;
 - (iv) if the bundled contract and the delivery services charge are both expressed in terms of energy charges only, deduct the delivery services charge from the bundled contract price.

ComEd seeks to revise Section D.3.(c) of the proposed instructions to remedy the alleged failure to address how the deduction of delivery service charges for contracts that are for demand and energy should be made when the delivery service charge is based only on demand. This deficiency must be remedied, according to ComEd, because its delivery service tariff, Rate RCDS, contains such charges. ComEd explains that the charges applicable under Rate RCDS include a Monthly Customer Charge and a Distribution Facilities Charge, which is a demand charge or energy charge depending on the class of the customer. For those customer classes with a demand based Distribution Facilities Charge, ComEd witness Geraghty states that the Monthly Customer Charge as well as the Distribution Facilities Charge should be converted to an energy cost per kWh. Mr. Geraghty testifies that the Rate RCDS charges should be determined for the contract by dividing the Rate RCDS charges by the on-peak energy usage of the customer. This amount, he explains, would then be subtracted from the contract charges for the on-peak hours (both the energy charge and the demand charge, which must also be converted to a cost per kWh value). Delivery service charges also have a transmission service charge that is based on ComEd's Open Access Transmission Tariff ("OATT") on file with the Federal Energy Regulatory Commission, reports Mr. Geraghty. These charges are stated on a cost per

kWh basis for each customer class. Mr. Geraghty states that the appropriate transmission service charge must be subtracted from the contract charges for the on-peak and off-peak periods.

Mr. Geraghty also elaborated on how a contract that covers multiple locations should be reported under the proposed instructions. Provided the pricing and other terms of the contract are the same for all locations covered under the contract, he states that the charges should be broken out as outlined above. If the locations covered under the contract fall into different delivery service customer classes, however, Mr. Geraghty testifies that the calculations would have to be performed using the charges for the applicable customer classes. The weighting given to each class, he continues, can be based on a percentage of total usage for all the locations to aggregate the contract price, delivery service charge, transition charge, and energy charge into contract values.

Ameren also seeks revisions to Section D.3.(c). To promote consistency, however, Ameren witness Miller testifies that the changes to Section D.3.(c) merit revisions to Sections D.4.(a),³ E.(a), and H.(b) as well. Ameren's proposed modifications to Sections D.3.(c), D.4.(b), and H.(b) may be found Schedule 4 attached to Ameren Ex. 1.0.⁴ Mr. Miller states that his additional instructions will clarify and promote uniformity in how reporting entities remove delivery service charges from bundled contracts. He adds that his revisions define how to uniformly report multiple prices applicable in a single period and how to report "blocked" rate structures where "blocked" means that the price varies over a period based on volume or some variable other than time. Absent these revisions, Mr. Miller argues that a contract could only be adequately reported by splitting the load and providing multiple 8,760 energy and pricing summaries which would significantly increase the complexity of reporting and review by the NFF. In the case of blocked rates, he testifies that the hourly unbundled price could only be determined for a future period by attribution and would in most cases be different between months because of the blocked rate structure of the utility's tariffs. Mr. Miller asserts that the instructions clearly need to specify how to attribute the various components of the rate to assure comparability of results.

While not intending to question the rate design approved by the Commission for ComEd or to suggest that a different rate design is more appropriate for ComEd, Mr. Miller notes that the approach discussed by Mr. Geraghty could distort the relationship between on-peak and off-peak market values. If delivery service charges are allocated only to on-peak hours, Mr. Miller asserts that it is mathematically possible that the resulting on-peak market value could be lower than the off-peak market value. To

³ Whether Ameren is recommending changes to Section D.4.(a) or D.4.(b) is unclear. Mr. Miller's testimony references Section D.4.(a), yet Schedule 4 attached to his testimony contains language to be inserted into Section D.4.(b). From the context of these sections, however, it is likely that Ameren intends to modify Section D.4.(b).

⁴ Ameren has not provided any amendatory language for Section E.(a).

demonstrate his point, Mr. Miller asks the Commission to assume that a hypothetical customer's bundled contract price is \$45/megawatt hour ("MWh"), transmission is \$2/MWh and the transition charge is \$7/MWh. These factors result in an unbundled energy price (computed without demand based delivery service charges) of \$36/MWh. He asks the Commission to further assume that the applicable delivery service tariff provides for a monthly customer service charge of \$300 and a demand charge of \$3/kW-mo. If the customer has a demand of 7.5 MW, and uses 4,000 MWh during the billing period, of which 2,400 MWh occur during the peak period, Mr. Miller concludes that the assessment of delivery service charges against all hours produces on-peak and off-peak market values of \$30.30/MWh; by contrast, assigning delivery service charges only to the on-peak hours results in an on-peak market value of \$26.50/MWh and an off-peak market value of \$36/MWh. Under cross examination, Mr. Miller stated that his purpose in making this observation was not to oppose ComEd's position, but to merely point out this possibility. Mr. Miller testifies that Ameren's proposed revisions in Schedule 4 attached to Ameren Ex. 1 support Mr. Geraghty's recommendations.

Nicor witness Bailey opposes ComEd's recommendations concerning Section D.3.(c). In cases where the price to a customer is encompassed in an "all-in rate," Mr. Bailey asserts that the delivery service charges should be spread over all the kWh for the term of the contract. Under Mr. Geraghty's methodology, if the demand charges are artificially driven to a customer's peak demand, Mr. Bailey maintains that the result will reflect a lower energy and demand charge for on-peak relative to off-peak. Mr. Bailey finds this to be a curious result given the market for power and energy. He suggests that the more valuable pricing signal is the overall power and energy price. It stands to reason, he argues, that the simplicity of pricing for customers is an important facet to the final contract entered into. While it is understood that ComEd's rates are peak driven, using Mr. Geraghty's peak demand concept to distort the calculation of the power purchase option price and transition charge to lower the energy/power prices for on-peak versus off-peak is not appropriate, according to Nicor. In its simplest terms, Mr. Bailey's position is that when a retail contract has an "all-in" energy rate, and that rate does not vary on a seasonal or time-of-day basis, then delivery service tariff charges should be spread over all the kilowatt-hours for bundled or all-in contracts. Mr. Bailey argues that this method is more practical, and reflects the meeting of the minds between the provider and customer.

Staff witness Bishop accepts Ameren's proposed modifications to Sections D.4.(b) and H.(b), but rejects the proposal to change Section D.3.(c)(i) because he does not believe that the suggested language adds any clarity to the instructions. In its Initial Brief, Ameren indicates that it no longer considers necessary the changes it had recommended for Section D.3.(c)(i) of the proposed instructions. In response to ComEd witness Geraghty's testimony, however, Mr. Bishop recommends modifying Section D.3.(c) as set forth in Schedule E attached to ICC Staff Ex. 3.0 to address Mr. Geraghty's concerns. Under cross examination, Mr. Geraghty testified that Mr. Bishop's proposed changes in Schedule E satisfy his concerns. IIEC supports the

language modifying Section D.3.(c) in Schedule E, subject to the addition of the new subsection (d) described above in the context of unbundling transition charges,

The Commission finds Ameren's proposed revisions to Sections D.4.(b) and H.(b) appropriate and directs that the language amending such sections in Schedule 4 attached to Ameren Ex. 1.0 be incorporated into the instructions. The definition of "blocked," as described by Ameren witness Miller and set forth above should be included in the instructions as well. The Commission is uncertain of whether Ameren seeks a modification of Section E.(a) given that it did not produce any amehdatory language or address Section E.(a) outside of Mr. Miller's direct testimony. In light of these facts, Section E.(a) will not be revised with regard to unbundling delivery service charges.

The Commission also concludes that Staffs proposed revisions to Section D.3.(c), as set forth in Schedule E, represent a reasonable compromise to the concerns raised by ComEd. In situations where a contract price is expressed in terms of energy only while the delivery service charge includes a demand and/or customer service charge, Staffs new language directs reporting entities to convert the demand and/or customer service charge in the delivery service tariff to an energy charge by calculating the 'total demand and/or customer service charge revenues in each pricing period and dividing such revenues by the total kWh of usage in the pricing period applicable to the charge. The resulting kWh charge is then subtracted from the bundled contract charge. By dividing a peak demand charge by peak hours only and a customer service charge or monthly demand charge by all hours, Staffs proposal mitigates the concerns raised by Ameren and Nicor. Accordingly, the revisions made to Section D.3.(c) in Schedule E attached to ICC Staff Ex. 3.0 should be adopted. The Commission also agrees with ComEd that the transmission component of delivery service charges should be deducted from the contract charges for the on-peak and off-peak periods.

D. Separating Energy and Capacity Prices

The reporting of energy and capacity prices to the NFF is governed by Sections D.4. and E. of the proposed instructions. Comments made by certain parties in this proceeding suggest that Sections D.4. and E. may be ambiguous. ComEd is among such parties. When contract prices are expressed only in a dollar per MWh unit, ComEd witness Feerick testifies that reporting a capacity price of zero would not be appropriate. In fact, he asserts, it would be misleading. Mr. Feerick states that capacity is implicitly included in all firm-service contracts. The fact that a contract does not include a separately stated capacity price, he continues, does not mean that capacity is not included, or that the value of capacity is zero; it simply means that the value of capacity is embedded in the \$/MWh price. Mr. Feerick relates that the 1999 NFF dealt with this issue by using one methodology to take into account the presence or absence of separately stated capacity prices and another methodology that blended all contract prices, whether or not separate capacity prices were stated, into a set of \$/MWh values. He contends that it was this latter set of estimates that proved useful in setting rates,

and is the approach that best reflects the many types of wholesale products in the market today.

Nor does Mr. Feerick believe it is appropriate to unbundle capacity and energy prices from contracts containing only prices stated in \$/MWh, the first reason being that there is no accepted methodology for such unbundling. In addition, he states that the intermediate step of converting the MWh price into capacity and energy prices is unnecessary to arrive at the \$/MWh values which are ultimately being calculated for the summer and non-summer peak and off-peak periods. Mr. Feerick testifies that even where separate prices are stated for demand and energy, the timing of revenue collections does not necessarily bear any relationship to the timing of the values of the product in the wholesale marketplace. According to Mr. Feerick, contracts are often structured to achieve a total return over a set period without regard to the structure of the payments, except to account for the time value of money.

Nicor witness Bailey agrees with Mr. Feerick that it is not appropriate to unbundle capacity and energy charge prices from contracts containing only prices stated in \$/MWh. Mr. Bailey testifies that in most cases, unbundling capacity and energy prices on an hourly basis would not only be administratively burdensome, but no accurate methodology to do so exists. He states that constructing such a methodology would be difficult since parties would have to agree on varying issues such as the valuation of risk, the market for contracts, the level of profits in the transaction, and the timing of revenue collection. Mr. Bailey is also unsure of the relative value that either seller or buyer is putting on energy versus power when the price is expressed in terms of \$/kWh, nor whether either party even contemplated a separation of the energy and capacity values in such contracts.

In cases where a contract is expressed in terms of \$/kWh or \$/MWh, Mr. Bailey states that the reporting entity should provide the NFF with identical pricing parameters by expressing these contracts in terms of \$/kWh or \$/MWh, instead of calculating the energy and capacity charges for each contract. So, for reporting wholesale contracts with a price expressed in \$/kWh for a one year term, Mr. Bailey maintains that the fixed kWh price should be reported for each of the 8,760 hours. He adds that quantities for delivery may vary over the year and that the submittal of additional information will assist the NFF to understand the price in the contract and reflect discrepancies that may exist from entering the fixed price 8,760 times in the reporting form. Nicor's specific recommendations are that "all-in" contracts should be filed with the NFF under Section D.4. ("Energy Pricing"). For those contracts that contemplate both energy and capacity components, Nicor suggests that separate entries be made under both Sections D.4. and E.

Similarly, PE Services understands Sections D.4. and E. of the proposed instructions to require reporting entities to unbundle contracts even if they are based only on \$/kWh. Other bundled pricing mechanisms, such as those basing price on a percentage of some benchmark, would need to be unbundled as well, according to PE

Services. PE Services agrees with Nicor that unbundling capacity and energy prices for such contracts to state this information on an hourly basis is burdensome and that there is no accurate methodology to do so. PE Services urges the Commission to adopt Nicor witness Bailey's reporting recommendations and believes reporting equal prices for all hours will provide the NFF more accurate information than could any type of artificial manipulation.

In an effort to clarify any confusion, Staff states in its Reply Brief that any attempt to separate energy and capacity prices in contracts expressed in \$/kWh or \$/MWh would be arbitrary. Staff does not advocate that contracts stated only in \$/kWh should be split into an energy price (\$/kWh) and a capacity price (\$/kW); nor does Staff believe that the proposed instructions require reporting entities to artificially split the energy only price in such contracts into separate capacity and energy prices. However, when contracts contain a separate capacity charge and energy price, Staff indicates that both prices must be reported to the NFF. Additionally, Staff asserts that contracts with a price stated in \$/kWh must be unbundled into a separate market value in \$/kWh, a delivery service cost in \$/kWh, and a transition charge in \$/kWh.

The Commission concurs with Staff's explanation concerning the separation of energy and capacity prices in contracts expressed in \$/kWh or \$/MWh. Since some confusion among certain parties exists, however, the instructions should be modified to clearly reflect this intent. In addition, it should be made clear that when contracts contain a separate capacity charge and energy charge, both values must be reported. Contracts with a price expressed in \$/kWh or \$/MWh must also be unbundled into a separate market value, delivery service charge, and transition charge, as described by Staff.

E. Definitions of "Firm" and "Marketer Firm"

Section F. governs reliability and interruptibility. Only ComEd takes issue with any of the proposed instructions in Section F. The language in question reads as follows:

- (b) In reporting the level of reliability, determine and define each level or category of reliability, e.g., Firm (same reliability as native load firm), Marketer Firm, (interruptible, but with liquidated damages), other type of firm (specify), or type of non-firm (all other transactions - specify), and designate each with a capital letter, e.g., A, B, C, etc. Also provide information regarding the delivery obligations of the selling entity.

The instructions for the 1999 NFF process, adopted in Docket No. 98-0769, varied in that the levels of reliability were listed as " 'Native Load' Firm, Marketer Firm, and Non-firm," without any parenthetical definitions.

ComEd argues that the parenthetical definitions following “Firm” and “Marketer Firm” in the proposed instructions are inappropriate. ComEd witness Feerick contends that there really are only two types of power – firm and non-firm. “Firm” power, according to Mr. Feerick, encompasses the following:

Firm as Native Load

This concept of firmness stems from the traditional, vertically integrated, fully regulated utility structure. Sales are curtailed in proportion to native load. This product is very rare in the wholesale marketplace.

System Firm

System Firm is power backed by a “system portfolio” of resources and is curtailed in accordance with a pre-established curtailment sequence prior to native load. It is a very common product in the Eastern interconnect for over-the-counter negotiated purchases/sales.

Marketer Firm

Marketer Firm has become the standard trading product in the wholesale market, especially in the short-term and intermediate-term markets. It is essentially a firm commitment to deliver power backed up with liquidated financial damages. If a supplier fails to provide delivery, it must reimburse the buyer’s cost of procuring replacement power elsewhere, if available. Because the measure of damages is power replacement cost, selling Marketer Firm power amounts to making a firm commitment to supply energy or pay for purchases of replacement energy from the basket of resources comprising the “market.” Indeed, because of the very significant costs associated with the failure to deliver a Marketer Firm product, Marketer Firm approaches the traditional level of firmness of Firm as Native Load; it becomes nearly indistinguishable from Firm as Native Load when delivered over firm transmission.

Mr. Feerick states that non-firm means delivery can be interrupted at any time, without conditions or consequences. The definition stated in the guidelines of Firm as “Native Load Firm” is incorrect, and the definition of “Marketer Firm” as “interruptible, but with liquidated damages” is misleading, according to Mr. Feerick. All types of firm power are curtailable, he continues, it just depends on the extent to which a seller is willing, or physically able, to supplement its system portfolio of resources with off-system purchases to avoid curtailing a System Firm or Firm as Native Load sale, or the economic risks it is willing to take in conjunction with curtailing a Marketer Firm sale. To remedy his concerns, Mr. Feerick recommends using the language approved by the

Commission in Docket No. 98-0769 or modifying Section F.(b) to distinguish only between firm and non-firm, with the type of each to be specified as well.⁵

Ameren witness Voytas opposes Mr. Feerick's recommendation and supports the text of Section F.(b) as proposed. Mr. Voytas disagrees with Mr. Feerick that Marketer Firm is nearly indistinguishable from Firm as Native Load. Mr. Voytas describes the former as a financially based product and the latter as facilities based product. A facilities based product requires that capacity be available to both serve and reserve the load, according to Mr. Voytas. A financially based product, he continues, does not have capacity or reserve requirements. Should it be necessary to curtail load, Mr. Voytas states that the load served by facilities based capacity is the last load to be curtailed; while load served by financially based energy and capacity is curtailed ahead of facilities based capacity. Mr. Voytas also disagrees that Firm as Native Load is rare in the wholesale marketplace and notes that Ameren supplies Firm as Native Load product to several of its wholesale customers. Ameren asserts that Marketer Firm and Firm as Native Load are different products and that the NFF report should capture the specific prices of these different products. Ameren recommends that the Commission not allow these products to be blended and give the impression that they are equivalent.

IIEC witness Stephens also opposes Mr. Feerick's modifications to Section F.(b). Mr. Stephens sees no reason for the Commission to reverse its decision on reporting the distinctions and levels of firmness among the various products, as he believes the Commission specified in Docket No. 98-0769. In the event that the Commission does not decide to adopt Section F.(b) as proposed, IIEC states that it has no objection to the use of the exact language adopted in Docket No. 98-0769.

Staff concedes that the language in Section F.(b) of the proposed instructions is slightly different than the language adopted by the Commission in Docket No. 98-0769. Staff points out, however, that the changes proposed by Mr. Feerick are also different than the language adopted by the Commission and observes that Mr. Feerick's revision would appear to combine "Native Load" Firm and "Marketer Firm." Staff states that it would accept the language adopted by the Commission in Docket No. 98-0769 in lieu of the proposed language for Section F.(b) to resolve ComEd's concerns.

Staff witness Larson recommends one other modification to the last sentence of Section F.(b), which states, "Also provide information regarding the delivery obligations of the selling entity." Mr. Larson testifies that the word "delivery" in that sentence could be misleading. The intent of the sentence, according to Mr. Larson, is to elicit from the reporting party the contracts location in the supplier's interruption queue; and is not related to transmission delivery. To avoid any misinterpretation, Mr. Larson recommends that the word "performance" be substituted for the word "delivery." This recommendation is unopposed and the Commission knows of no reason why it should

⁵ ComEd's amendatory language may be found on page 4 of ComEd Ex. 2.

not be adopted. Accordingly, the Commission adopts Mr. Larson's recommendation to replace the word "delivery" with "performance" in Section F.(b).

The Commission agrees with Ameren that Firm as Native Load and Marketer Firm are different products and that the contract summaries provided to the NFF should capture the specific prices of these different products. ComEd's arguments for combining the various types of firm product are unpersuasive in light of Ameren witness Voytas' discussion of Firm as Native Load and Marketer Firm. Nor is the Commission aware of any reason to return to the language used in Docket No. 98-0769.

IV. CONTESTED ISSUES NOT SPECIFICALLY TIED TO THE PROPOSED INSTRUCTIONS

NewEnergy makes a number of recommendations concerning the contract summaries to be reported to the NFF and the NFF's resulting report without referencing any particular section of the proposed instructions. Certain recommendations made by ComEd witness Geraghty have not been tied to specific sections of the proposed instructions either. Each of these recommendations will be addressed separately.

A. Precise Calculations

NewEnergy witness O'Connor urges the Commission to direct the NFF to calculate market values more precisely to reflect the distinctions between peak and off-peak and summer and non-summer pricing. Dr. O'Connor testifies that the Commission should highlight for the NFF the lessons that should be learned from the experience of the past two years. While agreeing that the NFF should strive for accurate market value determinations, IP responds by noting that NewEnergy has not provided any objective means by which to "more precisely" calculate market values.

The Commission concurs with NewEnergy and IP that the NFF's results should reflect the distinctions between peak and off-peak and summer and non-summer pricing as accurately as possible. The Commission also trusts that the NFF recognizes that it is his duty to do so. Since it is not clear how NewEnergy wants this to be accomplished, however, the Commission is not prepared to include specific instructions aimed at ensuring more precise market value determinations. If NewEnergy hopes to achieve more precise calculations through its other recommendations, those recommendations will be addressed below. Nor does the Commission perceive a need to highlight for the NFF in this Order the lessons that should be learned from the experiences of the past two years. The NFF is a professional and is expected to be aware of the past outcomes of the NFF process.

B. Load Shaping and Load Following

Dr. O'Connor argues that certain costs that are inherent in the retail sale of electricity have been overlooked by the NFF in prior years. In an effort to resolve this

perceived problem, he recommends that the Commission direct the NFF to ensure that market values include the unavoidable costs associated with load shaping and load following. Dr. O'Connor opines that the standard 5 X 16 wholesale product does not work as the principal means of measurement for retail prices because retail customers' loads are not uniform over the entire peak period. He further suggests that ARES will experience a substantial economic loss if wholesale prices are not adjusted for retail load profiles. Dr. O'Connor also recommends that utilities be required to utilize the retail load profiles for each customer class and perform an hourly load weighted average methodology using historical out-of-pocket marginal costs and provide this calculation to the NFF. Dr. O'Connor provided an example of how to implement this latter recommendation in his direct testimony.

Nicor witness Bailey agrees with Dr. O'Connor's recommendation that the NFF should make a load weighted average adjustment in the calculation of market value. Specifically, Mr. Bailey testifies that in past years it appears that the NFF tended to assume block transactions instead of considering load following and load shapes. While this year attention is being made to include the utility's specific load profiles found in their tariffs, Mr. Bailey states that the NFF should set the market value to reflect the reality of load following and load shapes inherent in purchasing large blocks of power and energy.

Ameren opposes Dr. O'Connor's recommendation that the NFF apply a load shaping/load following adjustment in the calculation of market values. Ameren witness Miller testifies that it should not be the responsibility of the NFF to review data outside of specific, stated contract values and to perform the calculations to convert the block purchase values to a retail level. Ameren argues that the Act does not allow the NFF to alter stated contract values to reflect other data outside of the reported contracts. In addition, Ameren avers that Dr. O'Connor's proposal would give reporting entities too much discretion when it comes to identifying and supplying data.

ComEd witness Crumrine testifies in opposition to NewEnergy's load shaping and following proposal as well. He begins by noting that Dr. O'Connor's fundamental concern with the NFF process appears to be focused on the market value determination by past NFFs. Since customer choice has only recently begun, Mr. Crumrine observes that past NFFs did not have the benefits of the types of contracts that he anticipates RESs will report to the NFF this year. Mr. Crumrine also testifies that some wholesale contracts have prices nearly identical to retail transactions because the load shape and timing of use is very similar to that of a retail customer.

According to Mr. Crumrine, Dr. O'Connor's proposal that the NFF perform a load shape adjustment is also contrary to statutory directives and approved tariffs. In calculating transition charges and power purchase option prices, Mr. Crumrine reports that customer class load shape adjustments are made through tariffs approved by the Commission in ComEd's delivery service case (Docket No. 99-0117). ComEd contends that the Act is very clear that such an adjustment is to be contained in a utility tariff

reviewed by all parties, not to be made by the NFF. Specifically, ComEd relates that Section 16-112(k) of the Act directs utilities, not the NFF, to make this adjustment through tariffs that are filed with, and reviewed by, the Commission. This section of the Act, according to Mr. Crumrine, provides that the market value will be determined for each customer class by adjusting the market values determined by the NFF, taking into account the daily, monthly, annual, and other relevant characteristics of the customers' demands on the electric utility's system. Mr. Crumrine states that these tariffs are often referred to as "translation" tariffs. Although the adjustment is already being performed in the translation tariffs approved by the Commission, ComEd contends that Dr. O'Connor, through his recommendations, would shift this translation responsibility to the NFF.

IP also opposes **NewEnergy's** proposal. In seeking a "peaking adjustment" through the inclusion of the proposed load shaping and load following calculation, IP states that **NewEnergy** is actually seeking to have the NFF perform a calculation that is already performed outside of the NFF process under the utilities' translation tariffs. Specifically, IP contends that the adjustment **NewEnergy** seeks is performed by calculations contained in Appendix 5 of IP's Rider TC. There is thus no need to have the NFF waste valuable time and resources gathering the data to perform a calculation that has been handled elsewhere, according to IP. Furthermore, IP maintains that there is no legal basis to make this adjustment in the NFF process: subsection 16-112(k) requires that the utilities perform this translation calculation, not the NFF. For these reasons, IP urges the Commission to reject this **NewEnergy** recommendation.

Staff also opposes' Dr. O'Connor's load shaping/load following adjustment and urges the Commission to reject it. Staff witness Larson testifies that the parties already litigated this issue in Docket No. 98-0769 where the Commission determined that this type of adjustment should be considered in the context of a Section 16-112(k) tariff proceeding. (See Docket No. 98-0769 Order, p.14-15) He further states that this issue was addressed in the utilities' delivery service tariff cases where the Commission ultimately adopted a method proposed by Staff witness Zuraski for this type of adjustment. Mr. Larson also points out that Dr. O'Connor has not provided any empirical evidence that the Zuraski method is insufficient. Finally, Mr. Larson states that utility estimates of marginal costs have been the subject of a never-ending debate.

The Commission agrees with the majority of parties in this proceeding that **NewEnergy's** proposed adjustment concerning load shaping and load following should be rejected. As pointed out by Staff, the Commission previously rejected such a proposal in Docket No. 98-0769 and deferred the matter to the utilities' delivery service tariff proceedings. ComEd and IP remind the Commission that, as a result of said proceedings, the utilities' tariffs already make the requested adjustments. Since no empirical evidence has been offered that the utilities' tariffs are insufficient, the Commission is not prepared to make any modifications at this time.

C. Retail Market Value

Because, according to Dr. O'Connor, wholesale contracts do not contain all of the costs of selling electric power and energy at retail, he recommends that the Commission direct the NFF to report separate market values for the wholesale price of electricity and the retail price of electricity. As demonstrated by the NFF market values for the last two years, **NewEnergy** maintains that over-reliance upon the wholesale figures fails to accurately reflect the markets into which utilities can sell their electricity. **NewEnergy** contends that determining market values for both wholesale and retail electricity is necessary to rectify the problems associated with the reporting of wholesale contracts. This will allow the Commission to see clearly the difference in the prices for these markets and then order appropriate adjustments pursuant to Section 16-112(k), insists **NewEnergy**.

ComEd witness Crumrine adamantly opposes **NewEnergy's** recommendation that the Commission direct the NFF to report a wholesale and retail market value. First, ComEd argues that the concept of "retail market value" is not reflected in the Act. The market value that the NFF is determining, according to Mr. Crumrine, is the value of the power and energy that the utility formerly provided to retail customers that select delivery services and is freed up when those customers no longer purchase their power and energy from the utility. ComEd characterizes market value as the amalgam of market opportunities available to the utility with respect to the freed up power and energy.

Secondly, Mr. Crumrine disagrees with Dr. O'Connor's assertion that there are two separate products known as "retail" and "wholesale," each with its own characteristics. In Mr. Crumrine's opinion, there is only one market for power and energy, although that market has many different types of transactions. He observes that all participants go to the same market and that wholesale energy can and is freely resold at retail. Mr. Crumrine explains that some generators sell directly to both retail and wholesale customers. Some entities, he adds, own their own generation while others do not, and some are affiliated with entities that own their own generation. Whether a sale of power and energy is "retail" or "wholesale" is not what drives price or determines load shape, according to Mr. Crumrine.

ComEd asserts that prices for transactions in the electricity market are primarily driven by factors other than whether the transaction is under wholesale or retail jurisdiction. In fact, when Dr. O'Connor discusses **NewEnergy's** experience in serving load, Mr. Crumrine notes that he appears to agree that there is only a single market for power and energy. Mr. Crumrine reports that Dr. O'Connor refers several times to "the real market" and appears to be including both wholesale and retail transactions within this phrase. ComEd maintains that Dr. O'Connor's recommendation that the NFF be instructed to determine separate market values for what he calls the "retail price of electricity" and the "wholesale price of electricity" is misguided, and should be rejected.

Relying on ComEd's arguments, Staff agrees that the Commission should reject Dr. O'Connor's recommendation that the Commission direct the NFF to calculate separate wholesale and retail market values.

The Commission first notes that no party has sufficiently demonstrated that the NFF will possess adequate information to determine even remotely accurate wholesale and retail prices for electricity. In light of its concern on this point, the Commission will not expect the NFF to calculate both a wholesale price and retail price for electricity. Should the NFF determine, however, that he possesses enough information to do so, he is certainly not prohibited from reporting market values for the wholesale and retail price of electricity.

D. Alternatives to the NFF Process

As indicated above, most, if not all, of the parties to this proceeding agree that the NFF process is flawed. Many suggest that the Commission should consider alternative processes for determining market value. One witness, Dr. O'Connor, included a proposed alternative with his rebuttal- testimony: although he does not suggest that the Commission adopt his alternative in this proceeding. Since it is highly probable that any proceeding in which an alternative to the NFF process is adopted will be very contested, the Commission is compelled to state in this proceeding that it makes no findings, either for or against, concerning the merits of Dr. O'Connor's proposed alternative. This is not to say, however, that the Commission would not consider an alternative to which all participants in a future proceeding agree.

E. NFF's Methods

NewEnergy suggests that the Commission direct the NFF to fully explain in the 2000 NFF Report the manner in which he made each of his calculations. No party has opposed this suggestion and the Commission knows of no reason why it should not be implemented. Accordingly, consistent with the requirements of Section 16-112(h), the NFF should fully explain in the 2000 NFF Report how he made each of his calculations.

F. Reporting of Demand Charges in Hourly Format

Mr. Geraghty testifies that it is not clear from the proposed instructions how contract demand charges should be allocated within the 8,760 hourly format. He recommends that the allocation for the type of retail contracts he reviews be accomplished by determining the annual demand charges under the contract and then dividing by the on-peak annual kWh. That charge per kWh, he continues, would then be allocated evenly over the on-peak hours.

Although it appears that Mr. Geraghty is raising an issue regarding Section D.3., in light of his brief testimony on this issue and in the absence of any amendatory language implementing his recommendation, the Commission is uncertain which

section of the proposed instructions Mr. Geraghty would have the Commission revise. Modifying the proposed instructions to address Mr. Geraghty's concerns without more information would be imprudent. In any event, the Commission believes that Section D.3. provides sufficient guidance on how to convert the demand component of a contract to an energy price, when necessary to do so, and report those values to the NFF.

G. Line Losses

Mr. Geraghty also claims that the proposed instructions do not address the value of line losses. Line losses, according to Mr. Geraghty, should be subtracted from the energy price to equate the price with that of the wholesale market. He recommends that the distribution level line losses be subtracted as stated in Rate RCDS and transmission level line losses as stated in the OATT. Since Mr. Geraghty has not demonstrated, however, that line losses are not already subtracted when the delivery services component of a bundled contract is deducted, the Commission finds that the proposed instructions should not be modified to address the value of line losses.

V. FINDINGS AND ORDERING PARAGRAPHS

the Commission, being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the subject matter and the parties hereof;
- (2) the findings and conclusions set forth in the prefatory portion of this Order are fully supported by the evidence of record and the provisions of the Act and are hereby adopted as findings of fact and conclusions of law for purposes of this Order; and
- (3) the general instructions and contract summary form, as modified herein and attached hereto as Appendices A and B, are reasonable and are hereby adopted for use in the 2000 NFF reporting process.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the findings and conclusions set forth in the prefatory portion of this Order, as reflected in Appendices A and B attached hereto, are adopted to govern the form and content of contract summaries for the 2000 Neutral Fact Finder process.

IT IS FURTHER ORDERED that subject to the provisions of Section IO-I 13 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED: March 30, 2000

Briefs on Exceptions must be received in hand by April 6, 2000.

Briefs in Reply to Exceptions must be received in hand by April 13, 2000.

Hearing Examiner

2000 Neutral Fact-Finder
Contract Summary Form
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Appendix A

General Contract Information

1. Respondent Name _____
2. Respondent Address _____

3. Contact Name _____
4. Phone _____
5. Fax _____
6. e-mail _____
7. Respondent Code _____ (nine characters)
- a. Contract Number _____ (four digits or series)
9. Seller(S) or Purchaser(P) _____
10. Counterparties (if required) _____

11. Date of Contract _____
12. Effective Date _____
13. Expiration Date _____ (excluding renewals)
14. Renewal Dates
_____ S P M C O
_____ S P M C O
_____ S P M C O
_____ S P M C O
_____ S P M C O
15. Purchaser's Class of Service
_____ AI Retail - Residential
_____ A2 Retail - Commercial
_____ A3 Retail - Industrial
_____ A4 Retail - Government
_____ A5 Other (Explain on Page 5)
_____ B Wholesale (Sale for Resale)
_____ B Wholesale, Buy-Back
_____ C Other (Explain on Page 5)
16. Power Purchase Option
_____ PPO assigned, price different
_____ PPO assigned, quantities different
_____ PPO assigned, term different
_____ Contract Includes Unexercised PPO Assignment
17. Bundled Service (Yes or No) _____ (if yes, provide detailed description on Page 5)

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Appendix A

Energy Pricing Data

A. Definition of Periods

Provide a full and complete description of the calendar and time parameters associated with each pricing period.

Period	Description
A	
B	
C	

B. Pricing Data

Provide the price associated with each time period.

If indices and/or formulas apply, check here _____ and provide a description on Page 5.

Period	Price
A	
B	
C	

2000 Neutral Fact-Finder
Contract Summary Form
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Appendix A

Capacity Pricing Data

A. Definition of Periods

Provide a full and complete description of the calendar and time parameters associated with each pricing period.

Period	Description
A	
B	

B. Pricing/Usage Data

Provide the price associated with each time period.

If indices and/or formulas apply, check here _____ and provide a description on Page 5.

Period	Price	Quantity
A		
B		
C		

Reliability/Interruptibility

A. Definition of Periods

Provide a full and complete description of the calendar and time parameters associated with each pricing period.

Period	Description
A	
B	
C	

B. Reliability Data

Period	Description
A	
B	
C	

(Final version will specify possible topics for additional information.)
(See: Instructions, Section G.)

[illegible]

The blank worksheet pages of Appendix A have been intentionally omitted,

2000 NEUTRAL FACT-FINDER PROCESS
Instructions for Completing the Contract Summary Form and Worksheets

A. Introduction

Section 16-112(c) of the Illinois Public Utilities Act (the Act) requires that electric utilities and alternative retail electric suppliers (ARES) operating in the State of Illinois provide the Commission-appointed Neutral Fact Finder (NFF) with sufficient information to determine the market value of electric power. For the Year 2000 NFF process, materials for complying with these data requirements include the following:

1. these instructions;
2. a five-page Contract Summary Form; and
3. two hourly data worksheets.

These materials were approved by the Commission in Docket No. 00-0007 on *<insert date>*. **The** instructions and the five-page Contract Summary Form are included as attachments to the Commission's order. Additionally, all three items are available in electronic format. The instructions are prepared in Word 97 (NFFConSumInst.doc). The five-page Contract Summary Form comprises one Excel Workbook (NFFConSumForm.xls), each page of the form being prepared as a separate worksheet within the workbook. Similarly, the two hourly data worksheets form an additional Excel workbook (NFFHourlyData.xls).

As explained more thoroughly in Section B.5 below, data must be submitted in both hardcopy and electronic formats. As a result, where necessary, these instructions make appropriate references to both.

It is recommended that these Instructions be read in their entirety before any attempt is made to complete the Summary Form and Worksheets.

B. General Instructions

1. Definition of Reporting Entities and Authority to Require Submission of Data

Pursuant to Section 16-112(c) of the Act, all electric utilities and alternative retail electric suppliers (ARES) operating in the State of Illinois must complete and submit a Contract Summary Form and Worksheets for each reportable contract or group of aggregated reportable contracts.

2. Reportable Contract Defined and Data Required

- (a) Subject to the exclusions noted in B3 below, reporting entities must report all required information for each retail or wholesale contract entered into after June 1, 1997 and before May 15, 2000, for:

- (1) the sale of electric power and energy that is either from a generating facility (or facilities) located in the State of Illinois or from a generating facility (or

facilities) located in a contiguous State and owned by an electric utility as part of its interconnected operating system for delivery at any time between January 1, 2001 and December 31, 2005, inclusive, or

- (2) **the purchase** and delivery of electric power and energy in or into the State of Illinois at any time between January 1, 2001 and December 31, 2005, inclusive.

- (b) Reporting entities should include any contract amended or changed **after** June 1, 1997, in a way that may be material to the determination of market price.
- (c) In addition, any information required by Sections 16-112(c)-(g) of the Act and not specifically requested in the prepared form should be attached and submitted along with the completed form.
- (d) Finally, responding entities are encouraged to provide any additional information that contributes to the NFF's ability to more fully understand the terms of the contract.

3. Exclusions

- (a) Pursuant to Section 16-112(c), the following contracts are not to be summarized:

- (1) contracts between an electric utility and its affiliate
- (2) contracts for the sale, purchase, or delivery of electric power made under rates and tariffs filed with the Commission – exceptions under (2), which *should* be reported and summarized:
- (i) contracts for the sale, purchase, or delivery of electric power made under tariffs filed with the Commission pursuant to Section 16-110(d) of the Act;
 - (ii) special or negotiated rate contracts between an electric utility and a retail customer to the extent the contract is for the provision of electric power and energy after the date the customer becomes eligible for delivery services; and
 - (iii) Power Purchase Options -PPO contracts entered into pursuant to Section 16-110(b) are exempt from reporting. However, if the PPO has been assigned and the contract between the reporting entity and the retail customer provides for prices, quantities or terms different from those applicable to a sale by the electric utility to the retail customer as set forth in the electric utility's applicable approved PPO tariffs, the contract must be reported as follows:
 - a) In all cases, if the prices in the contract between the reporting entity and the retail customer are different than the prices provided for in the PPO, the entire contract shall be reported and a check should be placed in the appropriate space provided.
 - b) If the quantity of electricity to be provided under the contract between the reporting entity and the retail customer is greater than the quantity to which the retail customer is entitled under

its PPO contract with the electric utility, a contract summary must be provided for the incremental power and energy over and above the quantities allowed under the PPO and a check should be placed in the appropriate space provided.

- c) If the term of the PPO contract is shorter than the term of the contract between the reporting entity and the retail customer, a contract summary should be provided for the incremental term of the contract that extends beyond the term of the PPO and a check should be placed in the appropriate space provided.
- (3) extensions or amendments to full requirements wholesale contracts existing on December 16, 1997, so long as such contracts, extensions, or amendments are cost of service regulated by the FERC
 - (4) swaps need not be summarized, but must be identified as a group of contracts not summarized; option contracts meeting the requirements of Section 16-1 12(c) should be reported, but must be summarized only when exercised
 - (5) an electric utility that sells electric power and energy from generating facilities located in the states contiguous to Illinois and owned by the electric utility as part of its interconnected operating system should not include with its contract summaries sales under rates and tariffs filed with the relevant public utility commission, unless the contract to be summarized is for the provision of electric power and energy after the date the customer becomes eligible for delivery services in such other State; contracts excluded under this paragraph need not be listed as exempt contracts.
- (b) If the reporting entity excludes any contract(s) or groups of contracts under this section, it must provide on Contract Summary Form Page S/Excel Worksheet "Add'l Info" a description of the contract(s) or groups of contracts excluded, including the number of such contracts (by group, if applicable) and a clear statement of the reason(s) as to why the contract(s) or groups of contracts are considered to be exempt. Exception: contracts excluded under item 3(a)(5), above.

4. Aggregation

Reporting parties may aggregate the requested data for groups of contracts that have identical terms and conditions, except such contracts need not be for the same quantity. All customers within the aggregated group must be subject to the same load profile. For example, two contracts for the sale of electric power to separate businesses at \$.07 per kilowatt-hour may be aggregated even though one is for a greater capacity (i.e., a larger business) than the other. However, two contracts, one for a small restaurant and one for a larger restaurant would not be eligible for aggregation, if different load profiles have been developed for the two types of customers, i.e., small restaurants and large restaurants.

5. Submission

- (a) The Contract Summary Forms and Worksheets must be completed and submitted to the NFF on or before June 1, 2000. The Contract Summary Forms (NFFConSumForm.xls) must be

submitted in hardcopy and electronic formats. The hourly data worksheets (NFFHourlyData.xls) should be submitted in electronic format only.

- (b) All materials, both the hardcopy forms and the diskette(s) or CD-ROMs containing the requested information in electronic format, should be delivered to:

Peter A. Hoffman
Deloitte & Touche
Two World Financial Center
New York, New York 10281-1414

Reporting entities may also submit electronic data via e-mail to phoffman@dtus.com. However, such internet transmissions must be followed-up with expedited delivery of diskettes or CD-ROMs containing the same information to the address listed above.

- (c) To aid in assuring the completeness and accuracy of the information provided, reporting entities should also enclose with their submissions a copy of the representation letter attached to these instructions as Exhibit 1, printed on company letterhead and signed by a senior officer (Le., Vice President or above) of the reporting corporation.
- (d) The NFF will reproduce all information submitted and provide a copy to the ICC staff. Staff will maintain the confidentiality of the information in accordance with the procedures set forth in Schedule C which is attached to the direct testimony of Robert Bishop in Docket 00-0007.

6. Retention of Supporting Workpapers

Reporting entities should retain all workpapers created and/or used in the preparation of the Contract Summary Form for at least two years. Since the ICC has the authority to audit any reporting entity's work, such working papers should be maintained in a well organized and easily accessible manner.

7. Authority of the NFF to Seek Additional Information

It should be noted that the NFF has the authority to seek further information from any reporting entity through the Commission staff, either through the audit process or otherwise.

C. Completion of General Contract Information (Summary Form -Page 1; Excel Worksheet "Gen'Info")

1. **Respondent Name**— full name of reporting entity
2. **Respondent Address** – address to which correspondence regarding the Contract Summary Forms should be forwarded.
3. **Contact** – Name and Title of reporting entity representative to whom correspondence, questions, and/or requests for additional information should be directed.

4. **Phone** – Business telephone at which contact may be reached.
5. **Fax** – Business fax number for contact.
6. **E-mail** –internet address for contact.
7. **Respondent Code** – Nine character code comprising the first three letters of the first three words of the reporting entities name. Example: Illinois Power Traders, Inc. = ILLPOWTRA.
8. **Contract Number** – A four-digit number assigned to each reported contract by the reporting entity. Contracts should be numbered sequentially beginning with 0001. If the form is being prepared for **a** group of contracts with aggregated data, each contract in the group should be numbered sequentially and the Contract **Number** shown on the form should reflect the boundaries of the series, e.g., 0005-0025.
9. **Seller or Purchaser** – Reporting entity should indicate whether it is the seller or the purchaser in the reported contract by placing an “S” **or** a “P” in the space provided.
10. **Counterparties** – Generally, counterparties need not be identified. However, where the counterparties to a contract are also required to report the agreement pursuant to Section 16-112(c), their names must be provided in the space(s) provided.
11. **Date of Contract** – Indicate the date of the contract, generally the date of execution. (MM-DD-YY)
12. **Effective Date** – Indicate the effective date of the contract. (MM-DD-YY)
13. **Expiration Date** – Indicate the expiration date of the contract, without considering any options for renewal. (MM-DD-YY)
14. **Renewal Dates** – Indicate any renewal dates provided in the contract, past or future. Also indicate the party authorized to exercise the option by circling the appropriate letter, as follows:
 - S = Seller
 - P = Purchaser
 - M = Mutual, i.e., both seller and purchaser
 - C = Conditional (Provide explanation on Contract Summary Form Page 5/ExcelWorksheet“Add’lInfo”)
 - 0 = Other (Provide explanation on Contract Summary Form Page S/Excel Worksheet“Add’lInfo”)
15. **Purchaser’s Class of Service** -Indicate the purchaser’s class of service by placing a check in the space next to the appropriate option. Class of service options are defined, as follows:
 - A1 Retail-Residential**
 - A2 Retail – Commercial**
 - A3 Retail – Industrial**
 - A1 Retail – Government**
 - A5 Retail Other**

Mark this option if the purchaser is in a retail class other than those noted above. Provide a detailed explanation on Contract Summary Form Page S/Excel Worksheet "Add'l Info".

B Wholesale (Sale for Resale)

If the wholesale contract is for the buy-back of electric power or energy from a generating facility (or facilities) sold by the purchaser, place a check in the appropriate space provided and also provide on Contract Summary Form Page S/Excel Worksheet "Add'l Info" a description of the plant/facility sold.

C Other

Mark this option if the purchaser is in a class other than any of the retail or wholesale classes noted above. Provide a detailed explanation on Contract Summary Form Page S/Excel Worksheet "Add'l Info".

16. **Power Purchase Options**— As noted above, Power Purchase Options are exempt from reporting. However, if the PPO has been assigned and the contract between the reporting entity and the retail customer provides for prices, quantities or terms different from those applicable to a sale by the electric utility to the retail customer as set forth in the electric utility's applicable approved PPO tariffs, the contract must be reported as follows:

- a) In all cases, if the prices in the contract between the reporting entity and the retail customer are different than the prices provided for in the PPO, the entire contract shall be reported and a check should be placed in the appropriate space provided.
- b) If the quantity of electricity to be provided under the contract between the reporting entity and the retail customer is greater than the quantity to which the retail customer is entitled under its PPO contract with the electric utility, a contract summary must be provided for the incremental power and energy over and above the quantities allowed under the PPO and a check should be placed in the appropriate space provided.
- c) If the term of the PPO contract is shorter than the term of the contract between the reporting entity and the retail customer, a contract summary should be provided for the incremental term of the contract that extends beyond the term of the PPO and a check should be placed in the appropriate space provided.

Additionally, if the reported contract includes a provision for the future assignment of a PPO to the reporting entity, a check should be placed in the appropriate space provided here.

17. **Bundled Service**— Indicate in the space provided whether or not the reported contract provides for bundled service(s). If yes, also provide on Contract Summary Form Page 5/Excel Worksheet "Add'l Info", a detailed description of those services and the methodology employed to unbundle the reported data (with sample calculations). Also indicate whether the contract price reflects any goods, services, or other things of objective value consideration other than elect-and the price paid for electricity.

D. Energy Pricing Data

1. Use of Contract Price or Actual Cost

Section 16-112(f) of the Act requires that market value calculations for electric energy be based on energy prices stated in contracts, “and, where no explicit energy prices or index price basis are stated, on the actual energy costs of the supplier in the corresponding period of the preceding year that would have been applicable to the electric energy provided under the contract.” This should be read as requiring information from the most recent corresponding period for which information is available as of May 1, 2000. For example, if the contract period for which the price of energy must be determined is March 2001, use the actual information from March 2000, if available. Otherwise, use actual information from March 1999. If, on the other hand, the contract period from which the price of energy must be determined is June through September of 2001, then use the actual information from 1999, because it is the most recent corresponding period for which information is available. If the contract period for which the price of energy must be determined is January through August of 2001, then use actual information from any **corresponding** months in 2000 for which it is available, and 1999 information for all other months. The method for calculating actual cost should be consistent with the method utilized in the contract.

2. Pricing Interconnection Point

Pursuant to Section 16-112(c):

- (a) For contracts for the sale of electric power and energy from a generating facility (or facilities) located in Illinois, or located in a contiguous State and owned by an electric utility as part of its interconnected operating system, prices or charges for electric power and energy reported as applicable are those stated at the point at which the electric power or energy leaves the transmission system of the electric utility or ARES.
- (b) For contracts for the purchase and delivery of electric power and energy in or into the State of Illinois, prices or charges for electric power or energy reported as applicable are those stated at the point at which the electric power or energy enters the transmission system of the electric utility.
- (c) For contracts for the sale of electric power and energy generated for delivery within the electric utility’s service area, prices or charges for electric power and energy reported as applicable are those stated at the point at which the electric power and electric energy enters the electric utility’s transmission system (i.e., the bus bar).

3. Treatment of Bundled Service Contract Prices

As required by Section 16-112(c), reporting entities are to deduct delivery service charges (including transition charges as defined and set forth in applicable tariffs that are in effect at the time the reporting entity’s data is submitted), and charges for services, if any, other than the provision of power and energy or delivery services, from bundled service contract prices reported to the NFF. If the contract to be unbundled, includes deliveries of power and energy after December 31, 2002, the current Commission-approved transition charge should be reduced if necessary to reflect @appropriate mitigation factor for years subsequent to 2002, as set forth in 220 ILCS 5/16-102. For such contracts, reporting entities must:

- (a) describe (on Contract Summary Form Page 5/Excel Worksheet “Add’l Info”) the nature of the bundled services and explain in detail how the

charges for services other than energy and power/capacity were determined and deducted from the contract price, and

- (b) report the price before (bundled) and after (unbundled) the deduction of Delivery Service, Transition (CTC), or other charges, separately identifying the component parts (e.g., market value, delivery services, and transition charge), their values, and their source(s), e.g., tariff citation.
- (c) when deducting delivery service charges:
 - (i) if the bundled contract expresses the price of electricity in terms of energy only, but the delivery service charge ~~is~~ - includes a demand and/or customer service charge and energy, convert the demand and/or customer service charge in the delivery service tariff to an energy charge by calculating the total demand and/or customer service charge revenues in each pricing period and dividing by the total ~~peak or off-peak kWh of usage, as appropriate,~~ in the pricing period applicable to the charge (i.e., all hours for a customer service charge or monthly demand charge, peak hours for a peak demand charge), and subtracting the calculated kWh charge from the bundled contract charge, and under no circumstances shall a bundled contract that expresses the price of electricity in terms of energy only have the price restated in terms of both energy and demand;
 - (ii) if the bundled contract and delivery service charge each have a demand, customer service and ~~an energy component charge~~, unbundle by deducting each component separately;
 - (iii) if the bundled contract expresses the price of electricity in terms of demand, customer service and energy, but the delivery services charge is calculated on the basis of energy only, unbundle by converting the demand and customer service component of the bundled charge into an energy charge as in (i) above, adding the calculated per kWh demand charge to the per kWh energy charge in the bundled contract and deducting the delivery service charge from the total bundled charge expressed on a per kWh basis;
 - (iv) if the bundled contract and the delivery services charge are both expressed in terms of energy charges only, deduct the delivery services charge from the bundled contract price.

4. Completion of Summary Form -Page t/Excel Worksheet "EnergyPricing"

- (a) In Part A of Summary Form - Page 2/Excel Worksheet "EnergyPricing", provide a full and complete description of the calendar and time parameters associated with each pricing period. The pricing periods reported should correspond to the periods specified in the contract. Descriptions should include the beginning and ending dates and times of each pricing period with all times reported as Central Standard Time or Central Daylight Time, whichever is in effect under the Time Standardization Act (5ILCS 440). A description must be provided for every pricing period in the contract, Add rows to accommodate additional periods, as required.

Examples:

Period A Summer (6-1 through 9-30); On-Peak (6 AM to 10 PM, M-F)

Period B	Summer (6-1 through 9-30); Off-Peak
Period C	Non-Summer; On-Peak (6 AM to 10 PM, M-F)
Period D	Non-Summer; Off-Peak

- (b) In Part B of Summary Form - Page Z/Excel Worksheet “EnergyPricing”, pricing data for each price block within each pricing period in the contract. Again, the pricing blocks and periods reported should correspond to the pricing blocks and periods specified in the contract. Pricing information should be reported in dollars per megawatt hour. A price must be provided for every pricing block and period in the contract. Add rows to accommodate additional blocks or periods, as required. When multiple prices apply on a volumetric basis during a pricing period or when “blocked” rates apply to a period, the weighted average prices will be identified for each period in addition to the individual and/or “blocked” prices. For purposes of this section, “blocked” means that the price varies over a period(s) based on volume or some variable other than time.
- (c) For contracts that base price on an index or indices, on Contract Summary Form Page S/Excel Worksheet “Add’l Info”:
- (i) report the index or indices by name and source;
 - (ii) explain in detail how the index is or indices are used in calculating prices;
 - (iii) provide any information, such as weight and base prices, necessary to properly apply the index or indices under the contract’s provisions; and
 - (iv) provide a sample calculation.

E. Capacity Pricing/Usage Data

Completion of Summary Form - Page 3/Excel Worksheet “CapacityPricing”

- (a) In Part A of Summary Form - Page 3/Excel Worksheet “CapacityPricing”, provide a full and complete description of the quantity and the calendar and time parameters associated with each pricing block in each pricing period. The pricing blocks and periods reported should correspond to the pricing blocks and periods specified in the contract. Descriptions should include the beginning and ending dates and times of each pricing period with all times reported as Central Standard Time or Central Daylight Time, whichever is in effect under the Time Standardization Act (SILCS 440). A description must be provided for every pricing block and period in the contract. Add rows to accommodate additional pricing blocks or periods, as required.

Examples:

Period A	Summer (6- 1 through 9-30); On-Peak (6 AM to 10 PM, M-F)
Period B	Summer (6-1 through 9-30); Off-Peak
Period C	Non-Summer; On-Peak (6 AM to 10 PM, M-F)
Period D	Non-Summer; Off-Peak

- (b) In Part B of Summary Form - Page 3/Excel Worksheet “CapacityPricing”, provide pricing and usage/quantity data for each pricing period in the contract.
- (i) **Pricing** - Again, the pricing periods reported should correspond to the periods specified in the contract. Pricing information should be reported in dollars per megawatt. A price must be provided for

every pricing period in the contract. Add rows to accommodate additional periods, as required.

- (ii) Quantity – For contracts involving demand customers, reporting entities must provide the NFF with expected usage data for the periods for which the NFF will determine the market value of electric power, i.e., January 1, 2001 through December 31, 2005. It is expected that such usage data **will** be based upon actual historic meter readings. For example, if the demand price is based on the highest meter reading of the month, that data should be reported. If peak and off-peak periods apply, all such data should be reported. If for some reason, meter readings are unavailable and some other source is utilized, the reporting entity must provide (on Contract Summary Form Page S/Excel Worksheet “Add’Info”) a full and complete description of that source and an complete explanation as to the methodology employed to translate data from that source to the usage data submitted.

F. Reliability/Interruptibility

Completion of Summary Form - Page 4/Excel Worksheet “Reliability”

- (a) The applicable reliability level(s) must be reported for all pricing periods in the contract that fall between January 1, 2001 and December 31, 2005. Add rows to accommodate additional periods, as required.
- (b) In reporting the level of reliability, determine and define each level or category of reliability, e.g., Firm (same reliability as native load firm), Marketer Firm (interruptible, but with liquidated damages), other type of firm (specify), or type of non-firm (all other transactions - specify), and designate each with a capital letter, e.g., A, B, C, etc. Also provide information regarding the delivery performance obligations of the selling entity.
- (c) Additional characteristics of energy, power, reliability, or any other characteristic with an impact on prices or charges should be reported on Contract Summary Form Page S/Excel Worksheet “Add’Info”.

G. Additional Information

Completion of Summary Form -Page S/Excel Worksheet “Add’Info”

Provide additional information, as appropriate and required, on the following items:

- (a) Contract or groups of contract excluded from reporting. (B3(b))
- (b) Explanation of “Conditional” under Renewal Date. (C14)
- (c) Explanation of “Other” under Renewal Date. (C14)
- (d) Explanation of “Retail Other” under Customer Class. (C 15)
- (e) Description of facilities sold. (C15)
- (f) Explanation of “Other” under Customer Class. (C15)
- (g) Description of Bundled Services and price unbundling methodology. (C17)
- (h) Nature and pricing of Bundled Services. (D3(a))

- (i) Prices based upon index or indices. (D4(c))
- (j) Source of usage data other than meter readings. (E(b)(ii), I(a) and I(b)(4))
- (k) Characteristics of energy affecting price. (F(c))
- (l) Methodology used to develop load profiles. (I(c))
- (m) Usage normalization. (I(d))
- (n) Any other information that contributes to the NFF's ability to more fully understand the terms of the contract.

H. Energy Pricing - Completion of Excel Worksheet "HourlyPrices"

- (a) Due to its size, a blank of this page of the Summary Form is not provided in hardcopy format, nor is it expected that a completed version will be delivered in hardcopy. However, a completed electronic version is required.
- (b) Based upon the period pricing information provided in Parts A and B of Summary Form Page 2/Excel Worksheet "PricingData", the reporting entity should complete Excel Worksheet "HourlyPrices", tilling in the price of each hour for every day of the year. Pricing information should be reported in dollars per megawatt hour. A price must be provided for every hour of every day. When multiple prices and/or "blocked" prices apply in a period, the weighted average price will be that displayed in the "HourlyPrices" under this section. For purposes of this section, "blocked" means that the price varies over a period(s) based on volume or some variable other than time.

I. Energy Usage - Completion of Excel Worksheet "Usage"

- (a) Reporting entities must provide the NFF with expected hourly usage data for each reported contract for the periods for which the NFF will determine the market value of electric power, i.e., January 1, 2001 through December 31, 2005. It is expected that such usage data will be based upon actual historic meter readings. However, if such readings are unavailable and some other source is utilized, the reporting entity must provide (on Contract Summary Form Page S/Excel Worksheet "Add'lInfo") a full and complete description of that source and a complete explanation as to the methodology employed to translate data from that source to the usage data submitted.
- (b) Historic meter readings should be used as the basis for usage data. Such readings include:
 - (1) **Hourly Meter Readings** – If such readings are available, they should be used as the basis for calculating hourly usage.
 - (2) **On-Peak/Off-Peak Meter Readings** – If such readings are employed, the reporting entity must also use applicable load profiles to distribute on-peak usage over the on-peak hours as defined in the contract and off-peak usage over the off-peak hours as defined in the contract.

- (3) **Monthly Meter Readings** – Similarly, if such readings are employed, the reporting entity must use applicable load profiles for the appropriate customer class to distribute usage.
- (4) **Other Meter Readings** – If some other meter reading is used as the basis for calculating **usage**, a brief description of the readings and the methodology used to calculate usage from them should be provided on Contract Summary Form Page S/Excel Worksheet “Add’lInfo”
- (c) On Use of **Load Profiles** – Load profiles have been developed by the electric utilities operating in the State of Illinois and are available for use by reporting entities for these purposes. Care should be taken in selecting the profile that best describes the customer being served. If any other load profiles are used to develop the usage data reported to the NFF, a brief description of the source of and/or methodology used to develop the profile should be provided on Contract Summary Form Page S/Excel Worksheet “Add’lInfo”. In all cases, the specific source of the load profile applied shall be identified.
- (d) Known **Adjustments** – If usage data is normalized to account for severe weather, known manufacturing plant shut-downs, or and other significant event, a detailed explanation of the normalization factor employed and its development should be provided on Contract Summary Form Page S/Excel Worksheet “Add’lInfo”.

2000 NEUTRAL FACT-FINDER PROCESS
Instructions for Completing Contract Summary Form and Worksheets -Exhibit 1
Reporting Entity Representation Letter

[To Be Reprinted On Company Letterhead]

Mr.-Peter A. Hoffman
Deloitte & Touche LLP
Two World Financial Center
New York, New York 10281-1414

Dear Mr. Hoffman:

Please be advised that with respect to the information provided by [Company's Name] to the 2000 neutral fact-tinder pursuant to Section 16-1 12 of the Illinois Public Utilities Act for purposes of determining the market value of electric power and energy,

- (1) we acknowledge that the neutral fact-tinder is relying on the contract summaries and related responses to questions regarding contract summaries provided by [Company Name], and
- (2) to the best of my knowledge and belief, (a) all information required to be provided by [Company Name] to the neutral fact-tinder pursuant to the Act was so provided and (b) the information described in (1), which we provided to the neutral fact-finder, was prepared in accordance with the requirements of Section 16-112(c) of the Act and related Order dated xxx of the Commission in Docket No. 00-0007 and, in that regard, is complete and accurate. In each instance when information was based on historical data (i.e. historical cost or quantity) such information is based on the **most** current actual amounts, from the corresponding period in the **most** recent 12 months for which information is available, at the time such data was provided. In each instance when quantities were estimated (i.e. projected usage data) due care was taken to provide the best estimates available.

Yours truly,

Name. Title